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10 OAK HARBOR FREIGHT LINES, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 WILLIE L. MITCHELL, ) CASE NO.: 3:07-CV-04388-MJJ  
14 )  
15 Plaintiff, )  
16 )  
17 v. )  
18 )  
19 OAK HARBOR FREIGHT LINES, INC., )  
20 )  
21 Defendant. ) JURY TRIAL REQUESTED  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Defendant OAK HARBOR FREIGHT LINES, INC., a corporation ("Defendant"), hereby comes and answers the allegations set forth in WILLIE L. MITCHELL's Complaint for Damages ("Complaint") as follows:

**I. JURISDICTION AND VENUE**

1. The allegations set forth herein set forth a legal conclusion requiring no response.
2. The allegations set forth herein set forth a legal conclusion requiring no response.

**II. PARTIES**

3. Defendant lacks information to admit or deny the allegations set forth in this paragraph, and on that basis denies these allegations.

4. Defendant lacks information to admit or deny the allegations set forth in this paragraph, and on that basis denies these allegations.

1           5. Defendant lacks information to admit or deny the allegations set forth in this  
2 paragraph, and on that basis denies these allegations.

3           6. Defendant lacks information to admit or deny the allegations set forth in this  
4 paragraph, and on that basis denies these allegations.

5                                   **III. FACTUAL ALLEGATIONS**

6           7. Defendant lacks information to admit or deny the allegations set forth in this  
7 paragraph, and on that basis denies these allegations.

8           8. Defendant lacks information to admit or deny the allegations set forth in this  
9 paragraph, and on that basis denies these allegations.

10          9. Defendant lacks information to admit or deny the allegations set forth in this  
11 paragraph, and on that basis denies these allegations.

12          10. Defendant lacks information to admit or deny the allegations set forth in this  
13 paragraph, and on that basis denies these allegations.

14          11. Defendant lacks information to admit or deny the allegations set forth in this  
15 paragraph, and on that basis denies these allegations.

16          12. Defendant lacks information to admit or deny the allegations set forth in this  
17 paragraph, and on that basis denies these allegations.

18          13. Defendant lacks information to admit or deny the allegations set forth in this  
19 paragraph, and on that basis denies these allegations.

20          14. Defendant lacks information to admit or deny the allegations set forth in this  
21 paragraph, and on that basis denies these allegations.

22          15. Defendant lacks information to admit or deny the allegations set forth in this  
23 paragraph, and on that basis denies these allegations.

24                                   **IV. DAMAGES**

25          16. Defendant lacks information to admit or deny the allegations set forth in this  
26 paragraph, and on that basis denies these allegations.

27          17. Defendant lacks information to admit or deny the allegations set forth in this  
28 paragraph, and on that basis denies these allegations.

1           18. Defendant lacks information to admit or deny the allegations set forth in this  
2 paragraph, and on that basis denies these allegations.

3                                   **V. FIRST CLAIM FOR RELIEF**

4           19. Defendant incorporates its answers to paragraph 1-18, above, as though fully set  
5 forth in response to this paragraph.

6           20. Defendant lacks information to admit or deny the allegations set forth in this  
7 paragraph, and on that basis denies these allegations.

8                                   **VI. SECOND CLAIM FOR RELIEF**

9           21. Defendant incorporates its answers to paragraph 1-20, above, as though fully set  
10 forth in response to this paragraph.

11           22. Defendant lacks information to admit or deny the allegations set forth in this  
12 paragraph, and on that basis denies these allegations.

13           23. Defendant lacks information to admit or deny the allegations set forth in this  
14 paragraph, and on that basis denies these allegations.

15           24. Defendant lacks information to admit or deny the allegations set forth in this  
16 paragraph, and on that basis denies these allegations.

17                                   **VII. THIRD CLAIM FOR RELIEF**

18           25. Defendant incorporates its answers to paragraph 1-24, above, as though fully set  
19 forth in response to this paragraph.

20           26. Defendant lacks information to admit or deny the allegations set forth in this  
21 paragraph, and on that basis denies these allegations.

22           27. Defendant lacks information to admit or deny the allegations set forth in this  
23 paragraph, and on that basis denies these allegations.

24           28. Defendant lacks information to admit or deny the allegations set forth in this  
25 paragraph, and on that basis denies these allegations.

26           29. Defendant lacks information to admit or deny the allegations set forth in this  
27 paragraph, and on that basis denies these allegations  
28

**VIII. AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The complaint fails to state a claim on which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The complaint fails to state a claim on which an award of compensatory or punitive damages can be granted.

**THIRD AFFIRMATIVE DEFENSE**

The complaint is barred in whole or in part by the applicable federal and/or state statutes of limitations.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to punitive damages because at all relevant times, Defendant engaged in good faith efforts to comply with all applicable law, including but not limited to the Fair Credit Reporting Act ("FCRA").

**FIFTH AFFIRMATIVE DEFENSE**

At all relevant times hereto, Defendant exercised reasonable care to prevent and correct promptly any allegedly unlawful behavior, and Plaintiff unreasonably failed to take advantage of the preventative and/or corrective measures provided by the Defendant or to avoid harm otherwise and failed to complain of any unlawful harassing conduct.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff did not suffer any damages attributable to any actions of this answering Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part or his recoverable damages should be reduced because he failed to take reasonable steps to mitigate his damages.

**EIGHTH AFFIRMATIVE DEFENSE**

This Defendant is not liable for any acts or omissions of its employees that were beyond the scope of his or her employment.

1 NINTH AFFIRMATIVE DEFENSE

2 Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, waiver,  
3 misrepresentation and/or unclean hands.

4 TENTH AFFIRMATIVE DEFENSE

5 Plaintiff's claims for damages based on emotional, mental or physical injuries are barred  
6 by the exclusivity provisions of the applicable workers' compensation laws within the California  
7 Labor Code.

8 ELEVENTH AFFIRMATIVE DEFENSE

9 Plaintiff's recovery in this action, if any, must be diminished by the amount of Plaintiff's  
10 comparative fault.

11 TWELFTH AFFIRMATIVE DEFENSE

12 The losses incurred, if any there were, and the damages sought by Plaintiff in the  
13 Complaint, which are denied, were caused directly and proximately by persons other than this  
14 answering Defendant, whether individual, corporate or otherwise, and whether named or  
15 unnamed in the Complaint.

16 THIRTEENTH AFFIRMATIVE DEFENSE

17 This Defendant expressly reserves the right to rely upon such other and further  
18 affirmative defenses as may be supported by facts to be determined through further discovery in  
19 this proceeding. The Defendant also expressly reserves the right to assert such counterclaims as  
20 may be supported by the facts and evidence.

21 Dated: January 7, 2008

THE ISON LAW GROUP

22  
23 By: /s/ Elizabeth R. Ison  
ELIZABETH R. ISON

24  
25 Attorney for Defendant  
OAK HARBOR FREIGHT LINES, INC., a  
26 corporation